

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JESSICA TAPIA,
VANESSA ARAGON, and
NEW MEXICO TRANSPORTATION UNION,
ERNEST LUCERO, Chairman,

Plaintiffs,

vs.

No. CIV 13-0206 JB/ACT

CITY OF ALBUQUERQUE,
RICHARD BERRY, Mayor,
ROBERT J. PERRY, Chief
Administrative Officer, BRUCE
RIZZIERI, Transit Dept. Director,
CITY PERSONNEL BOARD,
PAULA FORNEY, and
CARMEN WAGNER-MOGLE, M.D.,

Defendants.

and

CITY OF ALBUQUERQUE,
RICHARD BERRY, Mayor,
ROBERT J. PERRY, Chief
Administrative Officer, BRUCE
RIZZIERI, Transit Dept. Director, and
PAULA FORNEY,

Counterclaimants,

vs.

JESSICA TAPIA,
VANESSA ARAGON, and
NEW MEXICO TRANSPORTATION UNION,
ERNEST LUCERO, Chairman,

Counterdefendants.

FINAL JUDGMENT

THIS MATTER comes before the Court on: (i) its Memorandum Opinion and Order, filed March 31, 2014 (Doc. 88)(“Dr. Wagner-Mogle’s MOO”); (ii) its Memorandum Opinion and Order, filed March 31, 2014 (Doc. 90)(“City Defendants’ MOO”); (iii) its Memorandum Opinion and Order, filed March 31, 2014 (Doc. 91)(“Ms. Forney’s MOO”); and (iv) its Memorandum Opinion and Order, filed May 31, 2014 (Doc. 95)(“Personnel Board’s MOO”). Final judgment is appropriate.

In Dr. Wagner-Mogle’s MOO, the Court dismissed with prejudice any claim that Plaintiff Jessica Tapia had against Defendant Carmen Wagner-Mogle, M.D., under the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936. See Dr. Wagner-Mogle’s MOO at 94-95. The Court also dismissed without prejudice Tapia’s constitutional claims, permitting Tapia ten days in which to move to amend her Complaint for Violation of Statutory and Constitutional Rights, Breach of Contract, and Unfair and Prohibited Labor Practices, filed in state court January 15, 2013, filed in federal court March 4, 2013 (Doc. 1-1)(“Complaint”), and attach a copy of her proposed amended complaint. See Dr. Wagner-Mogle’s MOO at 94-95. Tapia filed no such motion to amend. Accordingly, the Court dismisses her constitutional claims against Dr. Wagner-Mogle with prejudice.

In the City Defendants’ MOO, the Court granted the Motion to Dismiss or, in the Alternative, Motion for Summary Judgment Dismissing Complaint in its Entirety, filed March 29, 2013 (Doc. 26), that Defendants City of Albuquerque, Richard Berry, Robert J. Perry, and Bruce Rizzieri (“the City Defendants”) had filed, thereby disposing of the Plaintiffs’ claims against the City Defendants. City Defendants’ MOO at 164.

In Ms. Forney’s MOO, the Court granted the Motion to Dismiss by Defendant Paula

Forney, filed May 3, 2013 (Doc. 43), thereby disposing of the Plaintiffs' claims against Ms. Forney. See Ms. Forney's MOO at 124.

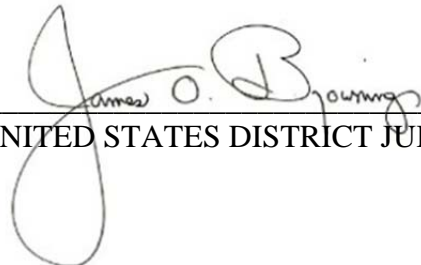
In the Personnel Board's MOO, the Court granted Defendant City Personnel Board's Motion for Summary Judgment, filed October 30, 2013 (Doc. 55), thereby disposing of the Plaintiffs' claims against the Personnel Board. See Personnel Board's MOO at 64.

Although the caption does not name any other Defendants, the Complaint lists "[t]he City Labor-Management Relations Board" as a party, Complaint ¶ 7, at 2, discusses this entity's actions, see Complaint ¶ 11, at 3, and asks for relief stemming from its actions, Complaint ¶ E, at 17. The Court has, however, reviewed the documents attached to the Notice of Filing State Court Record, filed March 7, 2013 (Doc. 10), and there is no evidence that this entity was served or that it has, at any time, participated in the case. The entity does not appear on the state court docket or on the federal court docket, and the state court docket indicates that no summons was ever issued to it. Moreover, as long as the case has been pending in federal court -- certainly more than 120 days, see Fed. R. Civ. P. 4(m) -- the parties have litigated this case without treating this entity as a Defendant. Accordingly, to the extent that the Plaintiffs intended to bring a claim this entity, the Court will dismiss the action without prejudice as against this entity.

Ms. Forney and the City Defendants have filed counterclaims. In their Answer to Complaint for Violation of Statutory and Constitutional Rights, Breach of Contract, and Unfair and Prohibited Labor Practices, Affirmative Defenses and Counterclaim, filed March 8, 2013 (Doc. 13)("City Defendants' Answer"), the City Defendants raised two counterclaims: (i) malicious abuse of process, contending, in essence, that the Plaintiffs' claims are meritless and that they are abusing the legal process, City Defendants' Answer ¶¶ 48-56, at 16-17; and (ii) prima facie tort, contending that the Plaintiffs intentionally brought a meritless claim to harm

the City of Albuquerque, see City Defendants' Answer ¶¶ 57-64, at 18-19. In her Answer to Complaint for Violation of Statutory and Constitutional Rights, Breach of Contract, and Unfair and Prohibited Labor Practices by Defendant Paula Forney and Counterclaim, filed March 8, 2013 (Doc. 15) ("Ms. Forney's Answer"), Ms. Forney raised counterclaims for malicious abuse of process and prima facie tort, largely for the same reasons that the City Defendants gave. See Ms. Forney's Answer ¶¶ 1-13, at 19-21. From representations that Ms. Forney and the City Defendants have made to the Court, the Court understands their positions to be that, should the Plaintiffs claims not go forward, they would not pursue those claims. See Transcript of Hearing at 67:14-17 (Franke)(taken November 1, 2013), filed November 7, 2013 (Doc. 63); id. at 73:2-7 (Anderson). The Court will, therefore, dismiss those claims without prejudice.

IT IS ORDERED that: (i) the claims of Plaintiffs Jessica Tapia, Vanessa Aragon, the New Mexico Transportation Union, and Ernest Lucero, Chairman, against Defendants City of Albuquerque, Richard Berry, Robert J. Perry, Bruce Rizzieri, the City Personnel Board, Paula Forney, and Carmen Wagner-Mogle, M.D., are dismissed with prejudice; (ii) any claims that the Plaintiffs intended to bring against the City Labor-Management Relations Board are dismissed without prejudice; (iii) any counterclaims that the Defendants brought against the Plaintiffs are dismissed without prejudice; and (iv) final judgment is entered.



UNITED STATES DISTRICT JUDGE

Counsel:

Paul Livingston
Placitas, New Mexico

Attorney for the Plaintiffs and Counter-Defendants

Rebecca E. Wardlaw
Managing Assistant City Attorney
Samantha M. Hults
Steve D. Nichols
Assistant City Attorneys
Albuquerque, New Mexico

--and--

Stephen G. French
Paula I. Forney
Erika E. Anderson
French & Associates, P.C.
Albuquerque, New Mexico

*Attorneys for Defendants and Counter-Claimants City of Albuquerque, Richard Berry,
Robert J. Perry, and Bruce Rizzieri*

Debra J. Moulton
Deborah D. Wells
Kennedy, Moulton & Wells P.C.
Albuquerque, New Mexico

Attorneys for Defendant City Personnel Board

Alfred L. Green, Jr.
Emily A. Franke
Neil R. Blake
Butt Thornton & Baehr P.C.
Albuquerque, New Mexico

Attorneys for Defendant Paula Forney

Lynn S. Sharp
Christopher Lee Moander
Charles P. List
Sharp Law Firm
Albuquerque, New Mexico

Attorneys for Defendant Carmen Wagner-Mogle, M.D.